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Written statement* submitted by the International Commission of Jurists, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[12 February 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Southeast Asia Regional Conference on Freedom of Religion or Belief, and violations in Brunei Darussalam

The International Commission of Jurists (ICJ) welcomes the report of the Special Rapporteur on freedom of religion or belief especially his analysis of the interaction between the rights to freedom of religion or belief and the right to freedom of opinion and expression.

The ICJ also wishes to recognise the Special Rapporteur's active participation at the Regional Conference on Freedom of Religion or Belief in Southeast Asia, which was organized by the ICJ in collaboration with the Asian Forum for Human Rights and Development (FORUM-ASIA) and Boat People-SOS (BPSOS) in Bangkok, Thailand, 30 September to 1 October 2015.

This event was attended by about 70 representatives from civil society organizations, religious groups, national human rights institutions, the ASEAN Intergovernmental Commission on Human Rights (AICHR), the ASEAN Commission on the Promotion and Protection of Rights of Women and Children (ACWC), and relevant UN agencies.

The conference served as a platform to identify challenges to religious freedom in the region, share best practices, as well as brainstorm ideas on overcoming obstacles and addressing violations related to state control, regulation of religion, and extreme interpretations of religion.

The participation of the Special Rapporteur was key to the fruitful dialogue among multi-stakeholders and, most importantly, to the achievement of consensus regarding the need to advance freedom of religion or belief in the region. In this context, participants agreed on the adoption of the *Declaration on Freedom of Religion or Belief in Southeast Asia*. Through this document, participants expressed their commitment to working to enhance the right to freedom of religion or belief, while recognising the universal, inalienable and non-derogable nature of the right.[1]

The ICJ appreciates the Special Rapporteur's exposition in his report on the external dimension of freedom of religion or belief, the *forum externum*, which is the manifestation of one's religion or belief. The manifestation of one's religion or belief, as mentioned in the report, covers a wide range of activities, including "celebrating religious holidays."[2]

As the Special Rapporteur mentioned in his report, the *forum externum* of freedom of religion or belief is not protected unconditionally but its legal protection remains strong.[3] Indeed, this dimension of freedom of religion or belief is subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others; discrimination on grounds of religion is prohibited in all circumstances.[4]

Nevertheless, religious communities of all faiths continue to face unlawful limitations of their freedom to manifest religion or belief in various countries around the world. In December 2015, for example, the Ministry of Religious Affairs of Brunei Darussalam announced a ban on all public celebrations of Christmas.[5]

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[1] The Conference Declaration was based on the Charter for Freedom of Religion or Belief and the New York Resolution for Freedom of Religion or Belief of the International Panel of Parliaments for Freedom of Religion or Belief (IPPFORB). The text of the Declaration as well as the names of the individuals and organizations who endorsed it is available at http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2016/01/South-East-Asia-Declration-Freedom-of-religion-Advocacy-2016-ENG.pdf

[2] Report of the Special Rapporteur on freedom of religion or belief, UN Doc A/HRC/31/18 (23 December 2015), para. 21.

[3] *Ibid.* at para. 25.

[4] E.g., International Covenant on Civil and Political Rights, article 18(3) as well as articles 2(1), 4(1), 26 and 27; Human Rights Council resolutions 28/8 and 28/29 (2015).

[5] Azlan Othman, "Muslims prohibited from celebrating Christmas: Imams", *Borneo Bulletin*, 5 December 2015, available at http://borneobulletin.com.bn/muslims-prohibited-from-celebrating-christmas-imams/

The prohibited activities included making Christmas trees and singing religious songs, sending Christmas greetings, putting up decorations and having nativity plays, creating sounds and, in general, doing anything that would amount to respecting Christianity.[6]

The Government of Brunei imposed a ban on public Christmas celebrations for the first time in 2014. The Ministry of Religious Affairs issued a press release in 2014 saying that wearing Christmas related clothing and openly displaying festivities of religions other than Islam violate section 207 (1) and section 209(1) of the Syariah Penal Code 2013.[7] The Government of Brunei justified these restrictions by saying that following non-Islamic celebrations like Christmas "could lead to *tasyabbuh* (imitation) and could unknowingly damage the *aqidah* (faith) of Muslims".[8]

Under section 207 (1) of the Syariah Penal Code, any Muslim who "teaches or expounds any doctrine relating to the religion of Islam in a manner contrary to *Hukum Syara'*"[9] or "teaches, expounds any doctrine or carries out, performs, or practices a ceremony or act contrary to *Hukum Syara'*" may be penalized with a fine not exceeding BND$20,000 (approximately US$14,081), imprisonment for a term not exceeding five years, or both.

Under section 209 (1) of the Syariah Penal Code, any person "who propagates" religions other than Islam to a Muslim or a person having no religion is guilty of an offence. He or she shall be penalized with a fine with an amount not exceeding BND$20,000 (approximately US$14,081), imprisoned for a period not exceeding five years, or both.

The ICJ considers these restrictions on public celebrations of Christmas and the criminal law provisions used as basis for these restrictions incompatible with international human rights law and standards. They cannot be justified on any of the grounds for limitations permitted by international law and standards. They blatantly and explicitly discriminate on the basis of religion.[10]

As the Special Rapporteur has underlined, limitations on the freedom to manifest a religion or belief must be based on principles not deriving only from a single tradition.[11] This is clearly not the case for sections 207(1) and 209(1) of the Syariah Penal Code 2013 and the ban imposed by the Ministry of Religious Affairs on public celebrations of Christmas because the sole basis of these restrictions is the Islamic faith.

The ICJ has previously stated that limiting the public display of festivities of religions other than Islam and threatening to prosecute under the Syariah Penal Code those who commit such acts, may encourage religious intolerance among the people living in Brunei.[12]

The Special Rapporteur expressed in his 2012 report that creating obstacles against religious rituals or ceremonies as well as imposing criminal sanctions upon persons who do not practice or identify themselves with the predominant religious tradition constitute violations to the right to freedom of religion or belief.[13] Furthermore, he also pointed out in his previous report that the adoption of anti-proselytism provisions such as the ones mentioned above increases the likelihood of harassment of those belonging to religious minorities.[14]

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[6] *Ibid.*

[7] Press release from the Ministry of Religious Affairs, *Brunei Times*, 27 December 2014, available at http://www.bt.com.bn/bookmarks-breaking/2014/12/27/just-mora-issues-statement-christmas-celebrations-brunei

[8] Press release from the Ministry of Religious Affairs, *Brunei Times*, 27 December 2014, available at http://www.bt.com.bn/bookmarks-breaking/2014/12/27/just-mora-issues-statement-christmas-celebrations-brunei

[9] The term Hukum Syara' means the laws of any sect which the Syariah Court considers valid.

[10] Section 207(1), at least, also introduces considerable ambiguity and vagueness which may be incompatible with the requirement that any restrictions of rights, particularly of a criminal character, must be sufficiently precise to qualify as "prescribed by law".

[11] *Ibid* at para. 28.

[12] International Commission of Jurists, Submission to the UN Committee on the Rights of the Child, for the preparation of the list of issues to be considered during the examination of the second and third periodic reports of Brunei Darussalam, 10 April 2015, para. 28.

[13] Report of the UN Special Rapporteur on freedom of religion or belief, UN Doc. A/HRC/22/51 (2012), paras. 49 and 53.

[14] Report of the Special Rapporteur on freedom of religion or belief, UN Doc A/HRC/28/66 (2014) para. 35.

Against this background, the ICJ calls on the Special Rapporteur to monitor closely the situation of freedom of religion or belief in Brunei Darussalam especially in relation to the country's religious minorities, and to request the State to extend an invitation to his mandate to undertake a mission to the country.

The ICJ encourages the Government of Brunei to implement measures recommended by the Special Rapporteur in his report, such as providing safe spaces for interreligious dialogue or allowing public discussions on religious issues in order to promote freedom of religion or belief in the country.[15]

Finally, the ICJ calls on the Government of Brunei to eliminate the restrictions imposed for celebrating non-Muslim festivities. The State must ensure that everyone, regardless of his or her faith, is allowed to practice and follow the customs associated to his or her religion or belief, both in public and in private.

[15] Report of the Special Rapporteur on freedom of religion or belief, UN Doc A/HRC/31/18 (2015), paras. 39 to 49.